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**SENATE FINANCE & CLAIMS**

Exhibit No. 1  
Date 3-25-09  
Bill No. H132

March 16, 2009

Representative Dan Villa  
417 Main Street  
Anaconda, Montana 59711

Dear Representative Villa:

I am writing in response to your request for an analysis of the requirements of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, with regard to funding the basic system of free quality public elementary and secondary schools as defined in section 20-9-309, MCA. This letter constitutes my analysis. As you are aware, House Bill No. 645, implementing the American Recovery and Reinvestment Act of 2009, was introduced on March 9, 2009, 2 days before the House Appropriations Committee took executive action on House Bill No. 2, the General Appropriations Act.

Section 14001 of Public Law 111-5 provides for the allocation of state fiscal stabilization funds to the states. Section 14002 of Public Law 111-5 governs the use of state fiscal stabilization funds. Section 14002(a)(1) of Public Law 111-5 provides that the Governor of each state shall use 81.8 % of the state's allocation under section 14001(d) of Public Law 111-5 for the support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services. Section 14002(a)(2)(A) of Public Law 111-5 provides that the Governor shall first use the funds described in section 14002(a)(1) to provide: (i) the amount of funds, through the state's primary elementary and secondary education funding formula, that is needed to restore, in each of fiscal years 2009, 2010, and 2011, the level of state support provided through the formula to the greater of the fiscal year 2008 or fiscal year 2009 level and where applicable, to allow existing state formula increases to support elementary and secondary education for fiscal years 2010 and 2011 to be implemented and allow funding for phasing in state equity and adequacy adjustments, if those increases were enacted pursuant to state law prior to October 1, 2008; and (ii) to provide, in each of fiscal years 2009, 2010, and 2011, the amount of funds to public institutions of higher education in the state that is needed to restore state support for those institutions, excluding tuition and fees paid by students, to the greater of the fiscal year 2008 or fiscal year 2009 level.

Section 14002(a)(2)(B) of Public Law 111-5 provides that if the Governor determines that the amount of funds available under section 14002(a)(1) is insufficient to support, in each of fiscal years 2009, 2010, and 2011, public elementary, secondary, and higher education at the levels described in clauses (i) and (ii) of subparagraph (a)(2)(A), the Governor shall allocate those funds between those clauses in proportion to the relative shortfall in state support for the education sectors described in those clauses. Under this federal direction, there is no priority between public elementary and secondary schools and higher education for the purpose of

restoring state support to the greater of fiscal year 2008 or 2009 levels. There is no state formula for determining the amount for funds for the support of higher education.

Section 20-9-309(2), MCA, provides that a "basic system of free quality public elementary and secondary schools" means: (a) the educational program specified by the accreditation standards provided for in section 20-7-111, MCA, which represent the minimum standards upon which a basic system of free quality public elementary and secondary schools is built; (b) educational programs to provide for students with special needs, such as: (i) a child with a disability, as defined in section 20-7-401, MCA; (ii) an at-risk student; (iii) a student with limited English proficiency; (iv) a child who is qualified for services under 29 U.S.C. 794; and (v) gifted and talented children, as defined in section 20-7-901, MCA; (c) educational programs to implement the provisions of Article X, section 1(2), of the Montana Constitution and Title 20, chapter 1, part 5, MCA, through development of curricula designed to integrate the distinct and unique cultural heritage of American Indians into the curricula, with particular emphasis on Montana Indians; (d) qualified and effective teachers or administrators and qualified staff to implement the programs in subsections (2)(a) through (2)(c); (e) facilities and distance learning technologies associated with meeting the accreditation standards; (f) transportation of students pursuant to Title 20, chapter 10; (g) a procedure to assess and track student achievement in the programs established pursuant to subsections (2)(a) through (2)(c); and (h) preservation of local control of schools in each district vested in a board of trustees pursuant to Article X, section 8, of the Montana Constitution.

Section 20-9-309(3), MCA, provides that in developing a mechanism to fund the basic system of free quality public elementary and secondary schools and in making adjustments to the funding formula, the Legislature shall, at a minimum, consider the following educationally relevant factors: (a) the number of students in a district; (b) the needs of isolated schools with low population density; (c) the needs of urban schools with high population density; (d) the needs of students with special needs, such as a child with a disability, an at-risk student, a student with limited English proficiency, a child who is qualified for services under 29 U.S.C. 794, and gifted and talented children; (e) the needs of American Indian students; and (f) the ability of school districts to attract and retain qualified educators and other personnel.

Section 20-9-309(4), MCA, provides that by July 1, 2007, the Legislature was required to: (a) determine the costs of providing the basic system of free quality public elementary and secondary schools; (b) establish a funding formula that: (i) is based on the definition of a basic system of free quality public elementary and secondary schools and reflects the costs associated with providing that system as determined in subsection (4)(a); (ii) allows the Legislature to adjust the funding formula based on the educationally relevant factors identified in that section; (iii) is self-executing and includes a mechanism for annual inflationary adjustments; (iv) is based on state laws; (v) is based on federal education laws consistent with Montana's Constitution and laws; and (vi) distributes to school districts in an equitable manner the state's share of the costs of the basic system of free quality public elementary and secondary schools; and (c) consolidate the budgetary fund structure to create the number and types of funds necessary to provide school

districts with the greatest budgetary flexibility while ensuring accountability and efficiency.

Section 20-9-306(5), MCA, defines the "BASE funding program" as the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in sections 20-9-331 and 20-9-333, MCA, and state equalization aid as provided in section 20-9-343, MCA, in support of the BASE budgets of districts and special education allowable cost payments as provided in section 20-9-321, MCA. Section 20-9-306(2), MCA, defines "BASE aid" as: (a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; (b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment; (c) the total quality educator payment; (d) the total at-risk student payment; (e) the total Indian education for all payment; and (f) the total American Indian achievement gap payment.

Section 20-9-306(6), MCA, defines a "basic entitlement" as a specific monetary amount for each type of school district for each fiscal year. Section 20-9-306(14), MCA, defines the "total per-ANB entitlement" as a specific monetary amount for each type of school district per calculated average number belonging, with that amount decreased by a specified amount per ANB up to certain levels. Section 20-9-326, MCA, provides that in preparing and submitting an agency budget pursuant to sections 17-7-111 and 17-7-112, MCA, the Superintendent of Public Instruction is required to determine the inflation factor for the basic and per-ANB entitlements in each fiscal year of the ensuing biennium as provided for in that section. Section 20-9-326(2), MCA, provides that the present law base for the basic and per-ANB entitlements, calculated under Title 17, chapter 7, part 1, MCA, must consist of any enrollment increases or decreases plus the inflation factor calculated pursuant to that section, not to exceed 3% in each year, applied to both years of the biennium. The calculation described in this paragraph constitute the "state formula", as described in section 14002(a)(2)(A) of Public Law 111-5, for the basic entitlement and the per-ANB entitlement.

The guaranteed tax base aid for an eligible district for the basic entitlement, total per-ANB entitlement is calculated pursuant to sections 20-9-366 through 20-9-369, MCA. The "state formula" provides for a monetary amount of up to 35.3% of the basic entitlement and up to 35.3% of the total per-ANB entitlement for eligible school districts under the guaranteed tax base aid component of the "state formula".

The "allowable cost payment for special education" is calculated pursuant to section 20-9-321, MCA, and under the BASE aid portion of the "state formula", 40% of the special education allowable cost payment is included as the state share.

Section 20-9-306(15), MCA, defines the "total quality educator payment" as the payment resulting from multiplying \$3,042 times the number of full-time equivalent educators as provided in section 20-9-327, MCA. That calculated amount is the amount of that component of the "state

formula".

Section 20-9-306(12), MCA, defines the "total at-risk student payment" as the payment resulting from the distribution of any funds appropriated for the purposes of section 20-9-328, MCA. There is no specified amount or calculated amount for this component under the "state formula".

Section 20-9-306(13), MCA, defines the "total Indian education for all payment" as the payment resulting from multiplying \$20.40 times the ANB of the district or \$100 for each district, whichever is greater, as provided for in section 20-9-329, MCA. That calculated amount is the amount of that component of the "state formula".

Section 20-9-306(11), MCA, defines the "total American Indian achievement gap payment" as the payment resulting from multiplying \$200 times the number of American Indian students enrolled in the district as provided in section 20-9-330, MCA. That calculated amount is the amount of that component of the "state formula".

The sum of the calculated amounts described is the amount of funding required under the "state formula" for purposes of section 14002(a)(2) of Public Law 111-5. As described, some of the components included in the "state formula" are subject to decline because of the method of calculation. Pursuant to section 14002(a)(2)(A)(i)(I) of Public Law 111-5, the "state formula" is used to restore the level of state support provided through the formula to the greater of the fiscal year 2008 or fiscal year 2009 level. Obviously, one-time-only appropriations would be excluded from the level of funding for fiscal years 2008 and 2009 because those appropriations are not made through the "state formula". Because House Bill No. 2 provides more total support for elementary and secondary education than was provided in either fiscal year 2008 or fiscal year 2009, there is no requirement in section 14002(a)(2) of Public Law 111-5 to use the federal funds through the "state formula" to restore state support to the fiscal year 2008 or fiscal year 2009 level.

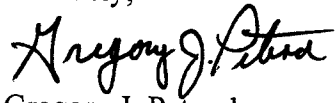
Because there is no formula for determining state support for higher education, restoring state support to the greater of the state support in fiscal year 2008 or fiscal year 2009 appears to be the first use of the funds described in section 14002(a)(1) of Public Law 111-5. Section 14004 of Public Law 111-5 provides that a public institution of higher education that receives funds shall use the funds for education and general expenditures in a way that mitigates the need to raise tuition and fees for in-state students or for modernization, renovation, or repair of institution facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

The remaining 18.2% of funds received under section 14001 of Public Law 111-5 may be used to support public safety or other government services, including education.

I hope that I have adequately addressed your questions. If you have further questions or if I can

provide additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory J. Petesch". The signature is fluid and cursive, with the first name "Gregory" being more prominent.

Gregory J. Petesch  
Director of Legal Services

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